

EXHIBIT 11

Page 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 12-120202 (MG)

Chapter 11

Administered Jointly

-----x

IN RE:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

-----x

July 26, 2013

8:35 a.m.

Deposition of S.P. KOTHARI, Ph.D.,
pursuant to Notice, held at the offices of
Willkie, Farr & Gallagher LLP, 787 Seventh
Avenue, New York, New York, before Todd
DeSimone, a Registered Professional
Reporter and Notary Public of the State of
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2 to why the trustees asked you to offer an
3 opinion on those subjects?

4 A. I have a general understanding.

5 Q. Please tell us what your
6 understanding is.

7 A. That the proposal is on the
8 table, and there are some parties
9 objecting to it, and the matter will go to
10 court and the counsel wanted my expert
11 opinion on these four issues.

12 Q. Now, counsel did not ask you
13 for an expert opinion on the appropriate
14 discount rate to use in analyzing the
15 expected payouts to the ResCap
16 policyholders under FGIC's rehabilitation
17 plan; is that right?

18 A. That is correct. The counsel
19 asked me that item 1 with respect to
20 discount rates.

21 Q. Right. That is the
22 reasonableness of the discount rate used
23 by Duff & Phelps in its analysis, right?

24 A. That is correct.

25 Q. But you could, based on your

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2 expertise, render an opinion on the
3 appropriate discount rate to use in
4 analyzing the expected payouts to the
5 ResCap policyholders under FGIC's
6 rehabilitation plan, correct?

7 MR. JOHNSON: Objection to
8 form.

9 A. I could, but I was not asked
10 to.

11 Q. Let's go to (ii). You were
12 asked to offer an opinion on the
13 reasonableness of the conclusion by Duff &
14 Phelps that the lump sum cash payment
15 under the FGIC settlement agreement is
16 within the range of present values of the
17 expected payouts to the ResCap
18 policyholders under FGIC's rehabilitation
19 plan, correct?

20 A. That is correct.

21 Q. You were not yourself asked to
22 analyze whether that lump sum cash payment
23 was within the range of present values of
24 the expected payouts to ResCap
25 policyholders under the FGIC

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2 rehabilitation plan, correct?

3 A. That is, again, you know, I
4 will ask what is said in (ii).

5 Q. Right. So you were not asked
6 yourself to assess whether the lump sum
7 cash payment referenced in this paragraph
8 was reasonable, right?

9 A. It sounds like a play on words,
10 but I was asked to comment on the
11 reasonableness of the conclusion by Duff &
12 Phelps.

13 Q. Right. And not to do an
14 analysis like Duff & Phelps itself had
15 done, right?

16 A. That is correct.

17 Q. But based on your expertise you
18 could have conducted an analysis of
19 whether the lump sum cash payment under
20 the FGIC settlement agreement was within
21 the range of present values of the
22 expected payouts to ResCap policyholders
23 under FGIC's rehabilitation plan, correct?

24 MR. JOHNSON: Objection to
25 form.

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2 Q. What are the other parts?

3 A. As I said earlier, it is about
4 discount rates and my own discussions with
5 some executives at Duff & Phelps and
6 information that is provided in support of
7 my opinion in this report.

8 Q. Did you reach an opinion,
9 whether reflected in Exhibit 1 or not, as
10 to the substance of Duff & Phelps'
11 conclusions?

12 MR. JOHNSON: Objection to
13 form.

14 A. Can you refine "substance"?

15 Q. As opposed to process.

16 MR. JOHNSON: Objection to
17 form.

18 A. Discount rate is part of
19 substance, so there are some -- process is
20 only part of the basis of my conclusion.
21 I did not independently verify cash flow
22 forecasts. So that's the sense in which
23 my rendering of opinion on the
24 reasonableness of Duff & Phelps is based
25 in part on the process that they followed

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2 question, sir. But let's try it again.

3 If you had been engaged by the
4 trustees to give them advice about whether
5 to approve the FGIC settlement agreement
6 based on what you know, would you have
7 advised them that the amount of the
8 commutation payment was reasonable?

9 MR. JOHNSON: Objection to
10 form.

11 A. That is a different question
12 that I have not been asked to analyze.

13 Q. So sitting here today you don't
14 have an opinion on that, correct?

15 A. That is correct.

16 Q. Do you have an opinion sitting
17 here today as to whether it was reasonable
18 for the policies on the FGIC wrapped
19 securities to be commuted pursuant to the
20 terms of the FGIC settlement agreement?

21 MR. JOHNSON: Objection to
22 form.

23 A. Please would you repeat that
24 question.

25 (The record was read.)

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2 A. I did not study that question.

3 Q. Do you have an opinion sitting
4 here today as to whether the trustees
5 acted reasonably in approving the FGIC
6 settlement agreement?

7 MR. JOHNSON: Objection to
8 form.

9 A. I did not study that question.

10 Q. So the answer is you don't have
11 an opinion sitting here today, right?

12 MR. JOHNSON: Objection to
13 form.

14 A. I don't have an opinion.

15 Q. Sitting here today do you have
16 an opinion as to whether the FGIC
17 settlement agreement was in the best
18 interests of investors in the FGIC wrapped
19 trusts?

20 A. I do not have an opinion.

21 Q. Sitting here today, do you have
22 an opinion as to whether the trustees
23 acted in good faith in approving the FGIC
24 settlement agreement?

25 A. I do not have an opinion.

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2 A. Can you refine "complex"?

3 Q. Do you have an understanding
4 yourself of the word "complex"?

5 A. Yes.

6 Q. Using your own understanding of
7 the word "complex," in your view are the
8 concepts and analyses reflected in Exhibit
9 2 complex?

10 MR. JOHNSON: Objection to
11 form.

12 A. So my understanding of complex
13 is broad in the sense that some things are
14 mathematically very complex. There are
15 degrees of mathematics that might be
16 involved. This doesn't strike me from
17 that standpoint mathematically very
18 complex. But there is a fair bit of
19 detail in this. So to the extent that a
20 lot of details are part of the definition
21 of complex, this is quite complex.

22 Q. Did you understand that Duff &
23 Phelps had relied upon FGIC to supply
24 certain information that Duff & Phelps
25 utilized in preparing its analysis?

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2 A. I do.

3 Q. And you understood that at
4 least in some respects Duff & Phelps did
5 not do its own analysis in reaching the
6 conclusions reflected on Exhibit 2?

7 MR. JOHNSON: Objection to
8 form.

9 A. If use of information is
10 synonymous with analysis, then I agree
11 with your characterization.

12 Q. Do you think it was reasonable
13 for Duff & Phelps to have relied on the
14 information supplied by FGIC and others
15 without verifying that information?

16 MR. JOHNSON: Objection to
17 form. Assumes facts not in evidence.

18 A. The process that Duff & Phelps
19 follow by way of getting some information
20 from FGIC and some other sources and
21 modeling using their own expertise, my
22 conclusion is that combination of the
23 processes they followed was reasonable.

24 Q. With respect to the information
25 that Duff & Phelps got from FGIC and

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2 Q. And did Duff & Phelps verify
3 the accuracy of that information?

4 MR. JOHNSON: Objection to
5 form.

6 MR. SIDMAN: Objection to form.

7 A. I don't believe they did, but I
8 do not know for a fact.

9 Q. So they may have verified that
10 information and may not have verified that
11 information?

12 MR. JOHNSON: Objection to
13 form.

14 A. Verification could imply each
15 and every piece of information, or
16 assessing reasonableness of information.
17 So sitting here I do not know whether they
18 verified. I do think they ascertained the
19 reasonableness of the information and the
20 sources.

21 Q. You don't know what information
22 they verified, correct?

23 MR. JOHNSON: Objection to
24 form.

25 MR. SIDMAN: Objection.

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2 in Exhibit 2 without verifying the
3 information Duff & Phelps was supplied
4 with by third parties?

5 MR. JOHNSON: Objection to
6 form. Assumes facts not in evidence.

7 MR. SIDMAN: Same objection.

8 A. Duff & Phelps did not by
9 themselves have the information about the
10 cash flows, the claims for policyholders
11 and the cash flows that they might
12 receive. So that basic information they
13 obtained from FGIC and from Lazard and
14 used that. I thought it was reasonable
15 because I did not believe there is any
16 incentive for FGIC or Lazard to distort
17 that information that they supplied to
18 Duff & Phelps. And that is the reason I
19 thought relying on that information
20 supplied by FGIC and Lazard was reasonable
21 in the analysis Duff & Phelps performed.

22 Q. Did you verify any of the
23 information that Duff & Phelps relied on
24 from FGIC and others in rendering the
25 opinions reflected in Exhibit 1?

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2 MR. JOHNSON: Objection to
3 form.

4 A. I did not.

5 THE WITNESS: Can we take a
6 break?

7 MS. EATON: Absolutely, sure.
8 (Recess taken.)

9 BY MS. EATON:

10 Q. I have a few questions for you
11 now about item 5 of your report which you
12 will find on pages 11 through 13. You are
13 aware that in reaching its conclusions
14 Duff & Phelps did not include -- let me
15 start over. I bungled that question.

16 Did Duff & Phelps take into
17 account potential litigation recoveries in
18 rendering its recommendation to the
19 trustees?

20 A. What I know is that the
21 projections and calculations that Duff &
22 Phelps have, the analysis that was
23 provided, that did not include
24 litigation-related cash flows. Whether
25 they considered and chose not to include

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2 is something I do not know of.

3 Q. You do not know whether Duff &
4 Phelps considered whether to include
5 potential litigation recoveries in
6 conducting its analysis?

7 A. What I know is that in the end
8 it did not include those and I agree with
9 that conclusion.

10 Q. Why did you reach the opinion
11 that it was reasonable for Duff & Phelps
12 not to include potential recoveries
13 associated with pending litigation in
14 making its recommendation with respect to
15 the FGIC settlement agreement to the
16 trustees?

17 A. For a number of reasons, and
18 the reasons are listed in Section 5 of the
19 report. First, I noticed that there was
20 some -- in some litigations FGIC is a
21 plaintiff and in some litigations FGIC is
22 a defendant and there is considerable
23 uncertainty with respect to the dollar
24 amount both in terms of inflows and
25 outflows as a result of being a plaintiff

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2 or defendant, and the timing of settlement
3 of those lawsuits and the uncertainty
4 associated with what the outcome would be.

5 Q. Anything else?

6 A. I also looked at FGIC's own
7 footnote disclosure and that indicates
8 uncertainty about the outcome and FGIC too
9 lists how it is a defendant as well as
10 plaintiff in a number of litigation
11 matters.

12 Q. Anything else?

13 A. I also reviewed the declaration
14 prepared by Mr. Lipps and he talks about
15 the uncertainty as well as he mentions and
16 I also independently recognize that to
17 litigate these matters, it can be costly.
18 So time is not the only factor, but on top
19 of that is cost. So the net inflow as
20 well as outflow from these litigation
21 matters would be affected.

22 Q. Anything else?

23 A. I looked at some of the reports
24 from the NERA Economic Consulting as well
25 as Cornerstone Research just as examples

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2 impression I received from those is that
3 there is some possibility of recovering
4 some litigation proceeds from settlement
5 from those claims, but my general
6 impression upon reviewing those is that
7 there isn't anything definite yet that has
8 risen to the level of being disclosed as
9 definitive settlement on the horizon, in
10 the financial statements of FGIC either.

11 Q. Are you done?

12 A. Yes.

13 Q. What were the causes of action
14 that FGIC was asserting in those claims?

15 MR. JOHNSON: Objection to
16 form.

17 MR. SIDMAN: Objection to form.

18 A. There might have been multiple
19 causes, but one cause that comes to mind
20 is some representation and warranties,
21 breach of those.

22 Q. Anything else?

23 A. I haven't, in preparing for the
24 deposition today, I haven't gone through
25 one by one, so I cannot sitting here give

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2 you details of other causes.

3 Q. And you did not go through
4 those one by one in rendering your opinion
5 that attempting to quantify the recoveries
6 in those cases would be speculative,
7 correct?

8 MR. JOHNSON: Objection to
9 form.

10 MR. SIDMAN: Objection.

11 A. I did not go through one by
12 one. The opinion I'm rendering is based
13 on the collective assessment that I
14 thought related on the basis of various
15 sources of information and the fact that
16 there are several cases in which FGIC is a
17 plaintiff as well as several cases in
18 which FGIC is a defendant, so there are
19 offsetting cash flow possibilities, none
20 of which has risen to any level of degree
21 of certainty.

22 Q. I understand that's your
23 opinion, sir, but if you wouldn't mind
24 answering the questions I'm actually
25 asking you, I would appreciate it.

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2 MR. JOHNSON: Ms. Eaton, no
3 need to be nasty. That tone of voice is
4 unnecessary, argumentative and improper.

5 A. So the reason I did not and
6 that is because you limited it to
7 plaintiffs. My opinion is not based on
8 only FGIC as a plaintiff, therefore your
9 question could not have been answered
10 without reference to the totality, at
11 least that's how I understood.

12 I'm making every effort to
13 listen to your question carefully and
14 answer as accurately as possible.
15 However, at times your questions seem to
16 need me to include something beyond, as in
17 this case, not just as a plaintiff, but
18 also as a defendant, because it went to
19 the opinion about the speculative -- the
20 speculative part is overall opinion.

21 Q. Can you identify any other
22 cause of action FGIC asserted in those
23 cases besides a claim for breach of
24 representations and warranties?

25 A. So are we still on only

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2 plaintiffs side?

3 Q. Yes. I want to know what they
4 were suing for. Do you know? Did you
5 know at the time you rendered your report?

6 MR. JOHNSON: Objection to
7 form.

8 A. I have given you an example.
9 So I do not know all of the reasons.

10 Q. Do you know what damages FGIC
11 was seeking in those cases?

12 A. I know in one matter it was to
13 the tune of a billion dollars.

14 Q. Do you know what the total
15 damages FGIC was seeking in those cases?

16 A. I do not know that.

17 Q. Do you know what stage each of
18 those cases were at at the time you
19 rendered your opinion?

20 A. I do not know the stage each of
21 the cases was.

22 Q. Did you know whether there had
23 been any developments in the law that were
24 favorable to FGIC with respect to those
25 claims at the time you rendered your

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opinion?

MR. JOHNSON: Objection to
form.

MR. SIDMAN: Objection.

A. I haven't studied that.

Q. Did you undertake an analysis
of the strengths of the claims FGIC was
asserting from a factual point of view?

MR. JOHNSON: Objection to
form.

A. I did not.

Q. Did you compare in any way the
claims that FGIC was asserting with the
outcomes in cases commenced by other
monoline insurers making the same claims?

MR. JOHNSON: Objection to
form.

MR. SIDMAN: Objection.

A. I'm generally aware of some of
the claims that some monoline insurers
have made.

Q. Okay. And did you compare
those claims to the claims that FGIC was
asserting?

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2 A. I did not compare those claims.

3 Q. Did you consider any verdicts
4 or settlements in those other cases?

5 MR. JOHNSON: Objection to
6 form.

7 THE WITNESS: Can you repeat
8 the question. I'm sorry.

9 (The record was read.)

10 A. In overall reaching the
11 conclusion, I did consider, yes.

12 Q. So did you consider the fact
13 that Assured obtained a verdict of \$90
14 million in its claims against Flagstar?

15 MR. JOHNSON: Objection to
16 form.

17 A. I cannot recall the specifics,
18 but I considered that in some cases there
19 has been a settlement.

20 Q. Please identify for us what
21 verdicts or settlements you considered in
22 rendering your opinion on this subject as
23 reflected in Exhibit 1?

24 A. Sitting here I recall
25 discussing with my team about Bank of

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2 America and I think that is because of
3 their acquisition of Countrywide, the
4 settlement that they had.

5 Q. What did you and your team
6 discuss in that regard?

7 A. We discussed how by being
8 plaintiff there is some potential for FGIC
9 to recover some inflows from being a
10 plaintiff and some exposure that FGIC
11 faces by way of outflows as a result of
12 other litigation.

13 Q. And how did that relate to the
14 Bank of America settlement?

15 A. How did what relate to the Bank
16 of America settlement?

17 Q. You discussed with your team
18 the settlement in the Bank of America
19 case, right?

20 A. Correct.

21 Q. What did you and your team
22 discuss about the settlement in the Bank
23 of America case?

24 A. Other things equal, the
25 settlement in Bank of America case we

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thought makes it more likely than not in the litigation matters that FGIC has, and equally it makes it more likely than not in the litigation matters in which FGIC is a defendant that it might lose. So that's the nature of the discussion that we had.

Q. How did the settlement in the Bank of America case make it more likely than not that FGIC might win on its claims?

A. To the extent that it has similar claims, then it has -- the fact that in some prior settlements it has -- the settlement has been unfavorable to, in that case, to Bank of America and to Countrywide, that to the extent that there are similar claims being made against some other banks by FGIC it would have -- the probability increases that they would receive some payment.

Q. Did you make an assessment of the probability that FGIC would prevail based on your analysis of the Bank of America settlement?

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2 MR. SIDMAN: Objection.

3 A. I did not have information to
4 make a quantitative analysis.

5 Q. Did you and your team conclude
6 that the likelihood of FGIC prevailing on
7 its claims was zero?

8 MR. JOHNSON: Objection to
9 form.

10 A. We did not perform any
11 quantitative analysis.

12 Q. How much was the Bank of
13 America settlement that you and your team
14 considered?

15 A. I cannot recall sitting here,
16 but I think Bank of America has been on
17 more than one case. I don't recall
18 sitting here the dollar amount.

19 Q. Bank of America has entered
20 into more than one settlement in respect
21 of RMBS securitization claims, correct?

22 A. That's my understanding.

23 Q. And did you consider all of
24 those settlements in reaching the
25 conclusions reflected in part 5 of your

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2 report?

3 MR. JOHNSON: Objection to
4 form.

5 A. Only generally qualitatively I
6 considered, not quantitatively.

7 Q. So you didn't consider, for
8 example, the amount of the claims made by
9 plaintiffs in those cases versus the
10 amount of recoveries received by way of
11 settlement?

12 A. I have a general understanding
13 of that.

14 Q. And what was the percentage
15 recovery by way of settlement in those
16 cases; do you know?

17 MR. JOHNSON: Objection to
18 form.

19 A. If I recall, it was in the
20 neighborhood of 25 percent.

21 Q. Would it be fair to conclude
22 that if FGIC had settled its claims that
23 the settlement amount would have been
24 roughly in the 25 percent range?

25 MR. JOHNSON: Objection to

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2 Q. What connection, if any, is
3 there between the \$206 million claim and
4 the claims that FGIC has asserted for
5 breaches of representations and warranties
6 in other matters?

7 MR. SIDMAN: Objection to form.

8 MR. JOHNSON: Objection to
9 form.

10 A. Well, if the settlement is not
11 accepted, then FGIC would experience all
12 the cash inflows and outflows, and in
13 those cash inflows and outflows there
14 would be any cash flow that comes from
15 this settlement or any other inflows as
16 well as outflows. That's the sense in
17 which I would imagine that would be
18 relevant. But that's not the question
19 that I was asked to examine.

20 Q. So in rendering your opinion,
21 if I understand your testimony correctly,
22 you did not consider the \$206 million
23 contemplated by the deal documents that
24 FGIC is projected to obtain?

25 MR. JOHNSON: Objection to

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form.

MR. DEVORE: Objection to form.

MR. SIDMAN: Objection.

A. I did not consider because it is not relevant to determining whether the \$253 million settlement is reasonable or not.

Q. Is it relevant to determining whether the value to be attributed to FGIC's claims as plaintiff was zero?

MR. DEVORE: I object to form.

MR. JOHNSON: Objection to form.

MR. SIDMAN: Objection.

A. I did not examine that question. The question that I examined was whether overall cash flows from litigation, do they rise to the level of definitiveness to have been included in the analysis, and since I determined that collectively those were speculative and therefore should have been appropriately ignored, I did not factor in the specific \$206 million amount that you referred to.

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2 Q. Now, you said you read
3 Mr. Lipps' declaration, right?

4 A. Yes.

5 Q. Did you have any discussions
6 with Mr. Lipps?

7 A. I did not.

8 Q. Do you know who Mr. Lipps is?

9 A. I can't remember the details as
10 to who Mr. Lipps is.

11 Q. Is Mr. Lipps an expert in
12 litigation recoveries?

13 MR. JOHNSON: Objection to
14 form.

15 A. If you say so.

16 Q. I'm asking you.

17 A. I cannot recall.

18 Q. Is Mr. Lipps an expert in
19 anything as far as you know?

20 MR. DEVORE: Objection to form.

21 MR. JOHNSON: Objection to
22 form.

23 MR. SIDMAN: Objection. Calls
24 for a legal conclusion.

25 A. I did not study or make that

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2 determination.

3 Q. Did you understand that
4 Mr. Lipps is counsel for the debtors in
5 certain cases?

6 A. That is my general
7 understanding.

8 Q. And do you understand why
9 Mr. Lipps prepared his declaration?

10 A. I don't recall the details of
11 that.

12 Q. Did you understand that the
13 declaration was filed in court?

14 A. I presume so. I did not focus
15 on those types of issues. I focused
16 mainly on what Mr. Lipps had to say about
17 the legal settlement issues, legal issues.

18 Q. You understood that Mr. Lipps
19 had concluded that the claims asserted by
20 FGIC posed a significant risk of an
21 unfavorable legal outcome for the debtors?

22 A. Okay.

23 Q. Did you understand that?

24 A. I did not -- I don't have a
25 specific understanding of that particular

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that time to settlement can take many
years."

Do you see that?

A. I do.

Q. What did you mean when you said
that FGIC's outstanding legal proceedings
are not directly analogous to securities
class action lawsuits?

A. My understanding is that many
of the lawsuits that FGIC has, those are
not class action lawsuits, so that is the
sense in which they are not directly
analogous to the litigation that is in the
NERA report and Cornerstone report.

Q. In what respects are the FGIC
claims in any way analogous to securities
class action lawsuits?

A. These are large, complex
matters that are litigated in court and
there is the general similarity between
litigation in class action versus these
types of litigations.

So these are not class actions,
but there are other dimensions of

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2 similarity in the litigation that FGIC is
3 facing and class action litigation
4 lawsuits.

5 Q. What are those other dimensions
6 of similarity?

7 A. I say those by way of general
8 description, that there would be some
9 discovery, there would be expert reports
10 written, there would be depositions taken,
11 so on and so forth, and that process tends
12 to be time consuming and outcomes are
13 uncertain, so there are similarities in
14 the litigation process for securities
15 litigation and the litigation that FGIC is
16 facing.

17 Q. Did you consider whether the
18 litigation that FGIC was engaged in as
19 plaintiff was analogous to any other sorts
20 of lawsuits apart from securities class
21 action lawsuits?

22 MR. JOHNSON: Objection to
23 form.

24 A. I did not.

25 Q. And why didn't you do that?

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2 "Under the base scenario, the ResCap
3 sponsored RMBS trust policyholders may
4 receive approximately 220 to \$340 million
5 on a net present value basis."

6 Do you see that?

7 A. I do.

8 Q. Did you discuss with Duff &
9 Phelps what the expected range of payouts
10 under the FGIC rehabilitation plan would
11 be?

12 A. Not specifically.

13 Q. Did you speak with them about
14 it generally?

15 A. The cash flow forecast under
16 different scenarios represent the expected
17 cash flows. As I said before, the
18 information for those projections came
19 from FGIC, from Lazard, and the model that
20 they used. I did not discuss anything
21 beyond that.

22 Q. Paragraph 6 of your report, you
23 conclude that "it was reasonable for Duff
24 & Phelps to conclude that the lump sum
25 payment under the May 23, 2013 settlement

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A. It is the amount that FGIC is expected to pay -- 253 is the lump sum that FGIC will pay policyholders, yes.

Q. It is the lump sum contemplated by the FGIC settlement agreement?

A. Yes.

Q. Do you know how that \$253 million lump sum was derived?

A. I do not know that.

Q. Is that something that you considered in rendering your opinions?

A. I did not.

Q. Please turn to page 5 of Exhibit 2.

A. Okay.

Q. Did you review this page of the Duff & Phelps report in connection with rendering your opinions?

A. I developed a general understanding of what this is, but I don't believe this has a direct connection to my opinion.

Q. What was your general understanding?

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main assumptions." Do you see that?

A. I do.

Q. Then under item J, it says "haircut of 40 percent of unpaid payout claim estimates." Do you see that?

A. I do.

Q. Do you know what that refers to?

A. An unpaid claim, I would just literally be reading back that assumption, that they are assuming there would be a haircut of 40 percent.

Q. A haircut on what; do you know?

A. Unpaid claim estimates, policyholders' claim estimates.

Q. Is that something that you took into consideration in rendering your opinions?

A. The cash flow forecasts, I took those from -- the entire chain from FGIC, Lazard, Duff & Phelps, as given to me, so therefore I did not go into questioning the assumption of 40 percent haircut.

Q. And that is not something that

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I take it you discussed with anyone, the
40 percent haircut?

A. I did not discuss that, no.

Q. You understood that Duff &
Phelps used a range of discount rates in
conducting its analysis?

A. Yes, I do.

Q. And you developed an opinion on
that subject, correct?

A. I did.

Q. What was your opinion on that
subject?

A. The range of 10 to 20 percent
discount rate that they used was
reasonable given my expertise on
calculation of discount rates.

Q. Do you know how Duff & Phelps
developed that range of discount rates?

A. I did not know at the time I
was preparing the report, but my
understanding, again, it is a general
understanding, is that they used the same
10 to 20 percent that Lazard had used.

Q. Do you know why Duff & Phelps

1 KOTHARI

2 used the same discount rate range as
3 Lazard?

4 A. I do not.

5 Q. Do you think it was appropriate
6 for Duff & Phelps in conducting its
7 analysis not to develop its own range of
8 discount rates?

9 MR. JOHNSON: Objection to
10 form.

11 A. I have not studied that
12 question.

13 Q. You didn't think about it at
14 all?

15 A. I was asked to comment on was
16 the use of 10 to 20 percent reasonable,
17 and I thoroughly analyzed that issue and
18 reached the conclusion that that seems a
19 reasonable range.

20 Q. You did not yourself calculate
21 a discount rate, right?

22 A. I asked what would be a
23 reasonable range of discount rate to be
24 used in this, and I came away saying that
25 20 percent -- 10 to 20 percent is a

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2 supportable range, is logical to use a
3 range of that nature for discounting cash
4 flows that have been discounted here.

5 Q. At paragraph 9 of your report,
6 you say "To evaluate whether this discount
7 rate is reasonable, I referred to the 2013
8 edition of the Ibbotson Cost of Capital
9 Yearbook (Ibbotson), an annual publication
10 that provides discount rate data for over
11 400 industries."

12 Do you see that?

13 A. I do.

14 Q. Did you use -- in developing
15 your opinion that that discount rate range
16 was reasonable, did you use any other
17 source apart from Ibbotson?

18 A. I did not.

19 Q. The Ibbotson cost of capital
20 yearbook, is that a tool you use in the
21 conduct of your work generally?

22 MR. JOHNSON: Objection to
23 form.

24 A. I used it in the past. I have
25 used it in my classroom. But it is not

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would turn out to be more or less the same as what Ibbotson reports because those are the techniques that have been developed in academic literature.

Ibbotson simply is providing a service of calculating those betas using those approaches and summarizing them in one place.

Q. Do you agree or disagree with the following statement: On an individual company basis, the models utilized in Ibbotson may provide information that is inaccurate or misleading?

A. I do not agree with that.

Q. Do you agree or disagree with the following statement: Depending on individual company circumstances, all of the assumptions underlying Ibbotson's models might not apply?

MR. JOHNSON: Objection to form.

A. It is possible.

Q. Possible that you agree?

A. Depending on the circumstances,

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2 of the haircut to be consistent with what
3 FGIC's settlement proposal was?

4 MR. SIDMAN: Objection.

5 MR. JOHNSON: Objection to
6 form, foundation, vague.

7 A. As I said, I have taken the
8 cash flows to be given from Lazard and
9 from FGIC and from Duff & Phelps. I
10 didn't look into the veracity or accuracy
11 of those projected cash flows.

12 Q. Is the haircut consistent with
13 the plan?

14 MR. SIDMAN: Objection to form.

15 MR. JOHNSON: Objection to
16 form. Calls for a legal conclusion.

17 MR. SIDMAN: Which plan?

18 A. I wasn't asked to opine on that
19 issue either.

20 Q. Well, you read the FGIC
21 rehabilitation plan; did you not?

22 A. I read it, but not with an eye
23 or with the level of detail to focus on
24 the haircut.

25 Q. Do you consider it reasonable